



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

#11

Food and Drug Administration
Rockville MD 20857

NOV - 2 1990

Re: Exosurf
Docket No. 90E-0343

- Charles E. Van Horn
• Patent Policy and Projects Administrator
Office of the Assistant Commissioner for Patents
U.S. Patent and Trademark Office
Crystal Park Building 2, Suite 919
Washington, D.C. 20231

Dear Mr. Van Horn:

This is in regard to the application for patent term extension for U.S. Patent No. 4,312,860 filed by Burroughs Wellcome Co. under 35 U.S.C. 156. The human drug product claimed by the patent is Exosurf (colfosceril palmitate, cetyl alcohol, tyloxapol), New Drug Application (NDA) No. 20-044.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the active ingredient, colfosceril palmitate. It is not the first commercial marketing or use of the active ingredients, cetyl alcohol or tyloxapol.

The NDA was approved on August 2, 1990, which makes the submission of the patent term extension application on October 1, 1990, timely within the meaning of 35 U.S.C. 156 (d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the Federal Register, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely,

Ronald L. Wilson, Director
Health Assessment Policy Staff
Office of Health Affairs

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COMMISSIONER OF PATENTS

cc: Lawrence A. Nielsen
Head, Patent Department
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